

## Executive Summary

The current review of the RMA is welcomed. It provides an opportunity for local government to contribute to resolving important environmental and economic issues.

Although local government suggests that the debate about the RMA is characterised by considerable exaggeration and myth, it acknowledges that genuine difficulties exist. Some of these difficulties are inherent in the business of resolving conflict over the use of resources. Others are more tractable.

In all cases, solutions to difficulties must maintain or improve environmental outcomes and make processes more efficient.

The Project Team that Local Government New Zealand (LGNZ) convened to develop proposals for improvement has examined various options and ideas. It has refined those options against guiding principles and after discussion in a well attended local government sector workshop. It offers them in the following pages with a genuine sense of shared responsibility.

The proposals that local government believes will have a significant positive impact on RMA performance include the following matters.

### 1. Recognising the national interest

The Project Team is not convinced of the legitimacy of complaints about local concerns taking precedence over national concerns. If that does occur it can only be because those representing national interests have failed to make their views through avenues that are available (including, most notably, the submission process).

It also sees potential danger in suggestions that Part II of the Act should be amended by the addition of social and economic priorities to balance the otherwise "protection" objectives. There is real doubt about the enshrinement of counterbalancing objectives as a mechanism to resolve tension between competing objectives. It seems more likely to exacerbate existing difficulties rather than resolve them.

Nevertheless, the Project Team offers the following proposals:

#### *At the generic level*

- The use of National Policy Statements (NPSs) to guide reconciliation of competing Part II matters (should Part II be amended to insert socio-economic priorities – something not widely supported). Any such National Policy Statement should be contemporaneous with legislative change.
- Of preference, the definition of "environment" should be amended to better acknowledge the social and economic dimensions of the environment.

#### *At the project level:*

- Greater use of submissions and hearings processes by government agencies to explain and promote the national interest.
- The preparation of "whole of government statements" as statements of the government's own internally reconciled position on projects.
- The use of a robust process to develop whole of government statements so that they may add value to local decision-making such as a strategic environmental assessment process that considers strategic matters that are otherwise difficult for local authorities to identify and take into account.

## 2. Dealing with the major projects

The Project Team reflected local government's support for devolution and notes its appropriateness in values-based jurisprudence. However, it is accepted that there are circumstances where local authorities, acting independently, may not make decisions in the best interests of New Zealand as a whole.

The sole way the Act addresses this problem at the moment is the provision for applications to be called-in. That mechanism is, however, suboptimal since it has insufficient flexibility to address the many different circumstances that might exist. Furthermore it fails to provide an appropriate role for local government (recognising that there will always be local interests at stake).

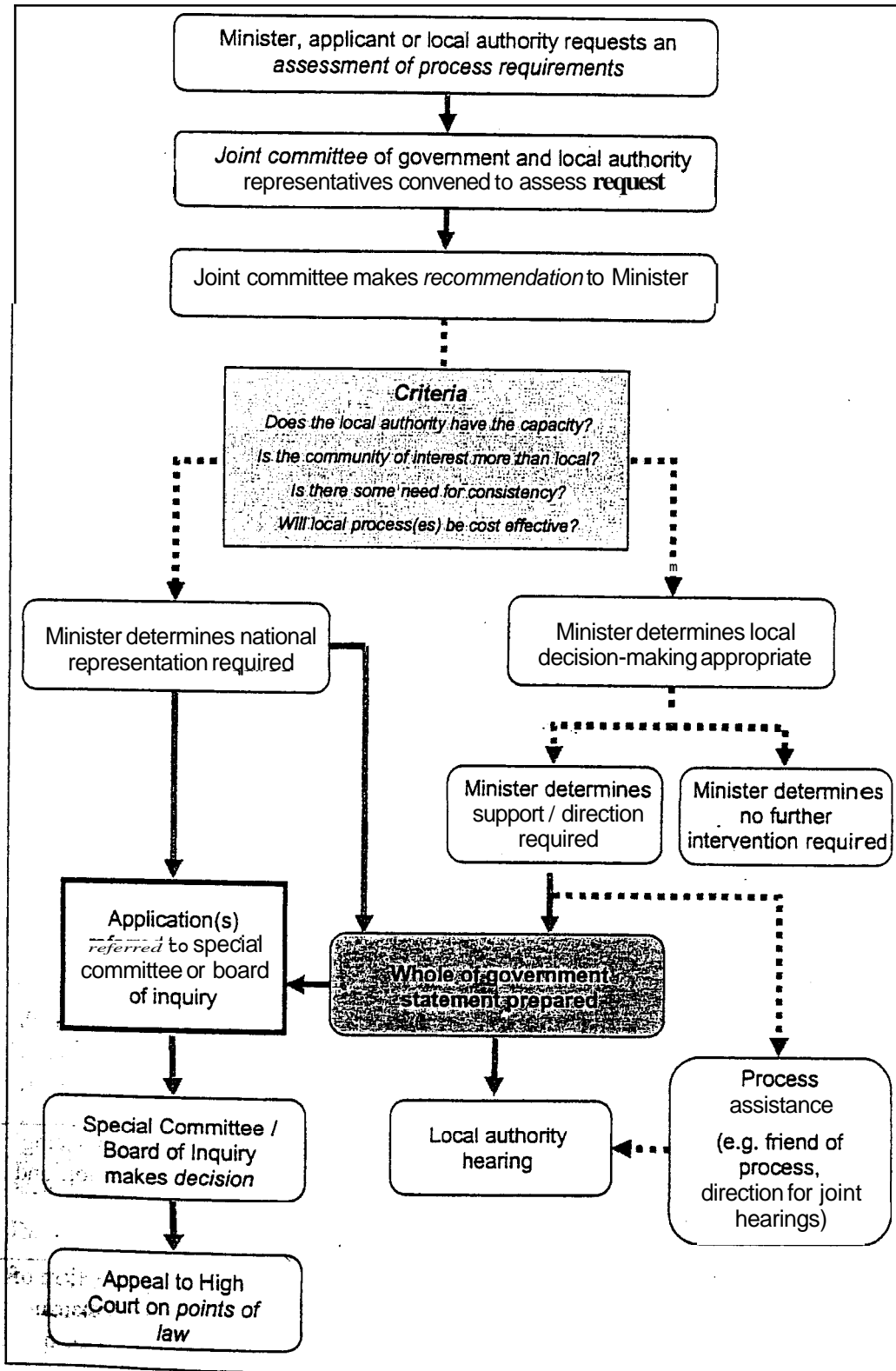
For those reasons the Project Team proposes the following alternative process.

### *Providing for input of central government (See Figure A)*

- The Minister for the Environment, the relevant local authority or the applicant could request an assessment of the decision-making process to be used for a specific project.
- As a matter of practice once any such request for an assessment is received, the Minister would involve representatives from the relevant local authorities in an assessment process.
- Those undertaking the assessment being central government officials and local government representatives would recommend to the Minister whether the standard process needs to be varied and; if so, what process should be followed.
- The process recommended might be either a referral to a special committee/board of inquiry, an enhanced local process (i.e. a local process supported with various forms of central government resources) or a standard local process.
- The Minister could accept or reject any recommendation of the joint officials group.
- If the Minister determines that national representation is required and refers the proposal to a special committee/board of inquiry, the decision of such a committee or board would be final
- Appeals from a special committee/board of inquiry could only be made on points of law.
- Whole of government statements should be issued for any project in respect of which the Minister determines that a departure from the standard process is required.



Figure A - Making Decisions on Major Projects: an Alternative Model



### 3. More Efficient Decision-making

Two inter-related issues continue to be associated with the Environment Court. First, is the time lag in securing an Environment Court decision (notwithstanding recent significant improvements). Second is the ability of the Court to hear evidence on matters that are not in dispute and/or hear evidence 'that was not available at the council hearing. This situation continues to:

- provide leverage for those seeking to secure commercial or personal benefit from the RMA regime
- encourage some applicants and other parties to treat council hearings as "dress rehearsals" for Court hearings for which they know they will have ample time to prepare.

In response, the Project Team recommends:

- Placing Environment Court in a position to hear cases within 1 month of the appeal period ending unless the parties have agreed to pursue mediation.
- Including a presumption in the Act against de novo hearings and against the introduction of new evidence.
- Dissuading (through legislative and/or other means) the Environment Court from determining matters of a policy nature and referring more policy matters back to local authorities for determination
- Encouraging greater use of mediation and other alternative dispute-resolution mechanisms.
- Encouraging greater consistency of practice between the five divisions of the Court on the matters raised above.

### 4. Better Quality Decisions

The Project Team acknowledges that the proposal to reduce the opportunity for hearing de novo at the Environment Court and focus on evidence presented at council hearings brings with it concomitant need for enhanced processes and procedures at the local authority level.'

The Project Team proposes the following responses to that added responsibility.

- A shift from a largely adversarial to a more inquisitorial style of decision-making effected by enhancing practice in the use of existing powers; and clarification and extension of powers so the local authority may use similar inquisitorial mechanisms to the Environment Court
- A greater guarantee of consistent decision-maker competency through adoption of a decision-maker accreditation scheme that trains and accredits elected decision-makers and independent commissioners.
- Adoption of a hearing committee structure where a majority of members (including the chair) must be accredited.

## 5. Involving Maori

Uncertainty about how, when, and to what extent to involve Maori in resource management decision-making continues to hamper efficient operation of the RMA

There is no question that *practice* by some applicants, iwi and local authorities could be better and improving practice by all those involved is essential to achieving greater efficiency in the future. However, the Act itself lacks clarity, has clearly confused the Courts, encourages poor practice and raises expectations unreasonably (especially amongst Maori). These matters need to be resolved by legislative amendment in conjunction with capacity building initiatives.

The Project Team proposes the following.

- Confirm the right of **iwi** to be consulted by local authorities on policies and plans. This obligation to consult **stems** from section **8** of the Act.
- Mandated iwi authorities, statutory acknowledgements and ancestral connection orders (via the Maori Land **Court**) should be listed in a schedule to the Act.
- The First Schedule of the Act should include a mandated *consultation process* specifically for iwi recognised, or who have recognised interests, in schedules to the Act.
- Confirm that iwi should be consulted on resource consents but only where they are *affected parties*.
- Confirm that local authorities' responsibility is only to **notify** (serve notice) on iwi - if **and** when they **are** affected parties.
- Confirm that there is no legal obligation for applicants to consult with affected parties (including iwi).
- Confirm that local authorities should *encourage* applicants to consult with affected parties (including iwi).
- Confirm that the **matters** that applicants should consult and report on are those **matters** set out in section 6(e) and 7(a).

## 6. Building Capacity

Legislative perfection will deliver perfect failure if the *means for implementation* remain inadequate or inconsistent

One of the key roles for central government under the wider RMA is to help **build** the capacity of the Act's primary implementation sector. Although some efforts **have** been **made in** this regard in recent years, **more** concerted effort is required.

The **Project Team** proposes the following capacity building initiatives.

- **A programme** of one-on-one engagement with local authorities in developing and implementing **high** quality administrative systems (**building** on the existing **programme** administered by MfE).
- **A programme** that promotes the sharing of good ideas and best practice on how to deal with everyday resource management issues – building on the Quality Planning (QP) website administered by **MfE**

- A programme aimed at building a culture of continuous improvement in the resource management field including schemes that recognise and reward good performance and good outcomes (such as the Performance Excellence Study Award – PESA - programme).
- A wider capacity building programme aimed at other important players in resource management performance – iwi, applicants and the general public.
- A conscious and concerted effort to effectively communicate RMA performance and stop the corrosive effect of inaccurate and unbalanced communication and the resultant public/business perceptions.

## 7. Minor and Technical Proposals

A series of more minor proposals will also enhance improvement if adopted. These include:

- Proposals to address the cumbersome nature *of plans and policies* and their associated development processes.’ These proposals include:
  - Reducing the required content of plans
  - Relying on more nationally prescribed standards (including, possibly, national environmental standards for certain ubiquitous land use matters)
  - Providing more flexibility to local authorities to restrict the extent to which further submissions are called for.
- Proposals to clarify the national role in relation to *allocation* of natural resources and to provide a wider range of powers. Further work is recommended on this issue before specific allocation principles or mechanisms are included within the Act.
- Other matters including:
  - Amend the resource consent notification provisions
  - Strengthen local authorities’ ability to manage vexatious and frivolous submissions
  - Introduce a “reasonable endeavours” test on local authority consultation
  - Enable local authorities to integrate some RMA and Local Government Act processes
  - Consider the issue of investment certainty in the context of further work on allocation mechanisms. Provide greater investment certainty by allowing decision-makers to take account (amongst other matters) of existing investment when considering applications for consent renewals, subject to compliance with environmental controls of the plan.
  - Rethink the role and status of national policy statements so that they are easier to prepare but less onerous in their effect.

Some proposals are *opposed* by the Project Team. These include:

- Altering the purpose of the RMA from sustainable management to sustainable development.
- The establishment of a stand alone investigations/audit/complaints authority *or* a national Environment Protection Agency.
- The introduction of direct referral (i.e. the opportunity to refer applications directly to the Environment Court).